APPENDIX A — ORDER OF THE SUPREME COURT OF NEW JERSEY DENYING PETITION FOR CERTIFICATION FILED SEPTEMBER 8, 2006

SUPREME COURT OF NEW JERSEY
C-7 September Term 2006
59,688

D.T., & M.T., ON BEHALF OF MINOR CHILD, N.T.,

Petitioners-Petitioners,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION, et al.,

Defendant-Respondent.

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3629-04 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Virginia A. Long, Presiding Justice, at Trenton, this 6th day of September, 2006.

s/ [illegible]
CLERK OF THE SUPREME COURT

APPENDIX B — STATE BOARD OF EDUCATION DECISION

EDU #6982-03 (#45-03), #470-03 (#9-04)

C #610-03E, #13-04, #213-04, #214-04, #215-04, #217-04, #220-04L, #221-04L

SB #45-03, #9-04, #24-04, #25-04, #26-04, #27-04, #28-04, #29-04 (consolidated)

D.T. AND M.T., on behalf of minor child, N.T.,

PETITIONERS-APPELLANTS,

V.

BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT, SOMERSET COUNTY,

RESPONDENT-RESPONDENT,

AND

D.T., on behalf of minor child, N.T.,

PETITIONER-APPELLANT,

V.

BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT, SOMERSET COUNTY,

RESPONDENT-RESPONDENT.

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Decision on motion by the Commissioner of Education,
October 29, 2003

Decided by the Commissioner of Education,
January 20, 2004

Decision on motions by the Commissioner of Education,
February 11, 2004

Decided by the Commissioner of Education, May 20, 2004

Decided by the Commissioner of Education, May 21, 2004

For the Petitioners-Appellants, D.T. and M.T., *pro se*

For the Respondent-Respondent,
Daniel C. Soriano, Jr., Esq.

D.T. and M.T. (hereinafter "appellants") filed eight separate petitions of appeal with the Commissioner of Education challenging disciplinary actions taken against their son, N.T., by the Board of Education of the Bridgewater-Raritan Regional School District (hereinafter "Board" or "Bridgewater-Raritan Board"). After the Commissioner dismissed the petitions, the appellants filed the instant appeals to the State Board. The briefing schedule was placed into abeyance at the appellants' request so that they could obtain hearing transcripts, and the appeals were consolidated. Following reestablishment of the briefing schedule, the appellants filed a brief in support of their consolidated appeal on November 19, 2004.

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By letter dated November 30, 2004, the Director of the State Board Appeals Office notified the appellants that:

> Daniel Soriano, Jr., Esq., counsel for the Bridgewater-Raritan Board has advised this office by phone call and letter dated November 30, 2004 that he has not received a copy of your appeal brief, which was filed with the State Board Appeals Office on November 19, 2004. Although you did include a proof of service showing that a copy of your brief was sent to the Bridgewater-Raritan Board's administrative office, Mr. Soriano has indicated that the Board has not received this filing.
>
> Please be advised that since the Bridgewater-Raritan Board is represented by counsel, it is your responsibility to provide a copy of your brief to that counsel. Accordingly, you must provide a copy to Mr. Soriano by December 10, 2004. His address is: 90-92 Grove Street, P.O. Box 1062, Somerville, NJ 08876. You must also provide this office by that date with proof that you mailed your brief to Mr. Soriano. The Bridgewater-Raritan Board's answer brief will be due 20 days after Mr. Soriano receives your brief.
>
> Be further advised that copies of all future submissions to the State Board must be sent directly to Mr. Soriano, rather than to the Bridgewater-Raritan Board. Given the history of problems effectuating service of papers in this

> matter, it would be prudent for both parties to send copies of all filings to each other by certified mail, return receipt requested.

By letter dated December 9, 2004, appellant D.T. responded that any further correspondence from the Director of the State Board Appeals Office would be regarded as a "form of Harassment [sic]." In response to the Director's notification that the appellants were required to serve the Board's counsel with their brief, D.T. stated that:

> The Respondent/Board counsel is not the Petitioners [sic] counsel (Thank God) as it's clearly the responsibility of the Respondent/Board to forward and provide upon their counsel with any additional submissions and copies, especially at their own expenses.

D.T. maintained that the appellants:

> **should always be able to send all mail, school letters and submissions with or without legal docket #'s upon the Respondent/Board.** ***Splitting up mail and*** **letters,** ***does not defeat any purpose as the Respondent/Board will continue their*** **violations even** ***with a hello letter mailed by the Petitioners as the Respondent/Board needs to stop with the mailing*** **games. The Respondent/Board without-a-doubt should be accepting and acknowledging all mail from the Petitioners and should never refuse mail or accept it (saying it never came) knowing that**

> **the mail was not returned back to the Petitioners.** [Emphasis in original.]

D.T. indicated at the bottom of his letter that a copy was sent to the Board. There is no indication that a copy of the letter was sent to Mr. Soriano. Nor did D.T. indicate that a copy of the appellants' brief was sent to Mr. Soriano.

By letter dated December 14, 2004, the Director of the State Board Appeals Office again advised the appellants of their responsibility to serve a copy of their brief on Mr. Soriano:

> By letter dated November 30, 2004, you were advised that Daniel Soriano, Jr., Esq., counsel for the Bridgewater-Raritan Board, had not received a copy of your appeal brief, which was filed with this office on November 19, 2004. You were notified of your obligation to provide a copy of your brief to Mr. Soriano by December 10, 2004 and also to provide this office by that date with proof of service indicating that you had mailed your brief to Mr. Soriano.
>
> As of this date, we have not received a proof of service from you. As a result, this matter is being referred to the Legal Committee of the State Board of Education for consideration of your failure to perfect the appeal.

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By letter dated January 15, 2005, appellant D.T. replied, *inter alia*:

> The Petitioners had always satisfied the required *Rules*, of service and mailings of all submissions (over 2 years of mailing) upon the Respondent/Board. Please also be aware of that the Petitioners technically and as stated within *Title 18A Education*, that *Pro-Se Petitioners* don't actually need to send submissions upon the Respondent/Board, never alone needing to send extra additional copies. The submissions are sent directly to the Respondent/Board once received by the appropriate office. But either way, the Petitioners satisfied the required *Rules* of service. [Emphasis in original.]

Again, the appellant indicated that a copy of his letter was sent to the Board. He did not indicate that a copy was sent to Mr. Soriano, and again he failed to provide proof of service of the appeal brief on Mr. Soriano.

Parties to appeals before the State Board of Education are required to serve all other parties with a copy of their submissions and to provide the State Board with proof of such service. *N.J.A.C.* 6A:4-1.10(a). *N.J.A.C.* 1:1-7.1(b), which governs contested cases in administrative agencies, makes it clear that service is to be made *"upon all attorneys or other representatives* and upon all parties appearing pro se. . . ." [Emphasis added.] This requirement is consistent with the rules governing practice in the New Jersey courts, where briefs and other papers filed in civil actions "shall be

served *upon all attorneys of record in the action* and upon parties appearing pro se. . . ." R. 1:5-1(a). [Emphasis added.] Cf. Rule 5, Federal Rules of Civil Procedure (service on a party represented by an attorney is made on the attorney unless the court orders service on the party). Consequently, as the appellants were instructed by letters dated November 30 and December 14, 2004, they were required to serve a copy of their appeal brief, as well as all other submissions, on Mr. Soriano in his capacity as counsel for the Bridgewater-Raritan Board.

Mr. Soriano has represented that neither he nor the Board received a copy of the appellants' brief. The appellants were notified on two separate occasions of their obligation to send a copy to Mr. Soriano, and they were given the opportunity to cure this deficiency. Despite such notice, it is apparent from their responses that the appellants have willfully failed and refused to provide Mr. Soriano with a copy of their brief. In view of the circumstances presented, we find such willful noncompliance to be fatal to the appellants' appeal. The appellants' opinion regarding the nature of their obligation does not supersede the express regulatory requirements. Although we are loath to dismiss an appeal on these grounds, the appellants' recalcitrance leaves us no option. Given the representation by Mr. Soriano that neither he nor the Board have received a copy of the appeal brief, the appellants' refusal to provide him with a copy deprives the Board of the opportunity to file a response thereto.[1] Hence, while we are

1. Although the appellants submitted proof of service of their brief on the Bridgewater-Raritan Board at its administration building, the appellants, as explained herein, were obliged to serve the Board's counsel, and they ultimately were responsible for assuring that Mr. Soriano received a copy of the brief.

mindful of the appellants' status as *pro* se litigants, we conclude under these particular circumstances that dismissal of the appeal is warranted.[2]

Accordingly, we dismiss the consolidated appeal in this matter.

February 2, 2005

Date of mailing _____

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2. We note that a similar dispute arose in the proceedings before the Commissioner in this matter. In his decisions of May 20 and May 21, 2004, the Commissioner noted that it was not necessary to resolve the issue of the appellants' failure to serve Mr. Soriano with a copy of their papers since the Bridgewater-Raritan Board's response to the petitions was not necessary for a fair determination of the matter.